APPEAL OF USE 2012-0019
LEMON CREEK GRAVEL EXTRACTION
BEFORE THE CITY AND BOROUGH OF JUNEAU
ASSEMBLY

PLANNING COMMISSION VERBATIM MINUTES
FROM DECEMBER 11, 2012
VII. **UNFINISHED BUSINESS**

USE2012 0019: A Conditional Use Permit to extract 240,000 cubic yards of material from the Lemon Creek streambed over a six-year period.

**Applicant:** Colaska Incorporated  
**Location:** 2025 Anka Street

**Staff Recommendations:**  
Staff recommends that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use permit. The permit would allow extraction of 210,000 cubic yards of gravel from the Lemon Creek streambed over a period of six years. The approval is subject to the following conditions:

**Annual Grading Permit, Bank Protection, and Seismic Monitoring**

1. The operator shall stockpile about 50 cubic yards of broken rap, equivalent to Class I rip-rap, near the project area to address emergencies if the flow becomes redirected towards the bank. If the rock is not used it may be sold when the project ends.

2. Prior to issuance of the first year's grading permit and approval of the first year mining plan, the operator shall submit a bond of $30,000, sufficient to repair any serious bank damage.

3. One month before the commencement of each mining season, the applicant shall submit a mining plan. The mining plan shall be processed by the Engineering Department as an annual grading permit. Such plan shall include:
   a. Estimation of material to be removed.
   b. Map of area to be worked (showing property lines).
   c. Map showing proposed culverts, access roads, bank stabilizations, berm details (including height, location, material composition and removal plan) stream relocations and other proposed features.
   d. Methods for protecting Lemon Creek from oil, fuel and hydraulic fluid (including leaks from heavy equipment).
   e. Prior to the commencement of mining, the applicant shall verify property line location and delineate offset distance to the extraction area.

4. The top of excavation slopes shall be prohibited within 10' of any banks or the property lines.

5. The applicant shall directly hire, or pay permit inspection fees to provide for periodic inspection of the mining area by an appropriately licensed engineer and/or hydrologist.

6. Periodic inspections shall be made as determined by the engineer and/or hydrologist, sufficient to monitor the operation. Such periodic inspections shall include visits during or after high water events.

7. Inspection reports shall be submitted to the Engineering Department for each 10,000 cubic yards of material removed from the stream, and those reports shall include the following information:
   a. Volume of material removed.
   b. Map of area worked.
   c. Verification of compliance with mining plan.
e. Opinion whether bank/property line setbacks are adequately protecting adjacent properties.
f. Bank protection/stabilization measures if merited.

8. An inspection report shall be submitted at the end of the mining season, which includes all items in numbers 4-7. The report shall be submitted to the Engineering Department and to the Community Development Department within one month of the end of the mining season, or April 15.

9. The applicant/operator shall confine all excavations to within existing rip-rap banks. Prior to proceeding with annual excavations, the applicant must find and stake adjacent rip-rap banks.

10. The applicant/operator shall protect the structural integrity of existing stream banks and rip-rap banks. A no-disturbance zone of at least 10 feet horizontal distance from adjacent rip-rap and banks is required. (This condition is necessary because rip-rap boundaries may or may not correlate with property boundaries, as noted in the earlier requirement to mine 10 feet from property boundaries.)

11. The applicant shall protect all vegetated slopes and maintain a similar non-disturbance zone identified above, unless a site-specific engineering analysis indicates otherwise.

12. All cut-slopes shall be less than 2 horizontal to 1 vertical unless a site-specific engineering analysis proves that a steeper slope protects adjacent properties.

13. Excavated areas within the creek bed must be clearly marked with warning signs. Excavated slopes must be graded to a gentle slope of 4 horizontal to 1 vertical before signs are removed. These measures shall be integrated into the annual grading permit.

14. The approved access points at 1721 Anka Street, 1791 Anka Street, and Ralph's Way shall be inspected each year to verify that no changes have been made to the embankment due to heavy creek flows during the previous year. Alterations to the proposed access will require approval by the Community Development Department and the CBJ Engineering Department.

15. Prior to the issuance of a grading permit, the applicant shall provide a vibration control plan that includes the maximum safe threshold for seismic activity at the nearest adjacent residential structure to the operation, as established by a licensed engineer.

16. During extraction activity, the site shall be monitored by the applicant for seismic activity at the nearest adjacent residential property or at a location agreed upon by the project engineer and adjacent property owners, during each day of operation.

17. The applicant shall submit seismic activity reports at the end of each month of mining activity to the CBJ Engineering Department.

18. If seismic activity exceeds the threshold established in Condition #15, the applicant shall cease operations and notify the CBJ Engineering Department and CBJ Community Development Department. The applicant shall not continue with operations until alternative methods that do not exceed the threshold have been identified by the applicant and approved by CBJ Engineering.

Project Expiration and Dates and Times of Operation -

19. Gravel operations shall take place between December 1 and March 15. No in-water work shall be allowed between March 16 and November 30 with the following exception:
In-stream work to connect the excavated sections of the creek shall be allowed for one 7 day period between May 15 and June 15. The applicant shall provide notice to CBJ Engineering and the Alaska Department of Fish and Game before work commences.

20. Operating hours shall be 7 a.m. to 6 p.m. on weekdays and 9 a.m. to 6 p.m. on Saturdays. Operations shall not be allowed on Sundays.
21. Gravel extraction shall be limited to 40 days per year.
22. The permit shall expire after six years or extraction of 210,000 cubic yards of gravel, whichever comes first.
23. The extraction amount shall not exceed 35,000 cubic yards per year.

**Truck Traffic and Street Maintenance**

24. Truck traffic from the development shall be routed only through the Anka Street/Glacier Highway intersection.
25. Truck traffic and heavy equipment operation associated with gravel extraction is strictly prohibited from the Davis Avenue side of the river.
26. Prior to leaving the excavation area, the transport truck bed, with the tailgate locked, shall be raised to a minimum twenty degree angle for a timed 5 minutes to allow excess water to escape. Tilt time may be reduced if water escapement occurs sooner based on the project engineer's visual assessment and approval.
27. The applicant shall protect catch basins along the route from sediment infiltration by use of manufactured Catch Basin filters.
28. The applicant shall inspect the traveled route a minimum of twice daily for escaped material from the haul.
29. The applicant shall sweep and clean the roadway at the end of each day if any water or material has escaped, or if a major spill occurs.
30. The applicant shall immediately respond to any additional clean-up requests during the operation from the project engineer, CBJ or ADOT.
31. The applicant shall construct a rockery lane for debris removal from truck tires prior to entering Anka Street.

**Habitat Protection**

32. No sediment migration from the truck or ramp shall be allowed in the waterway.
33. Prior to commencement of mining and prior to gravel bar coverage with snow and ice, the applicant shall field stake the exact excavation configuration and setbacks from flowing water.
34. The applicant shall place any large woody debris encountered during excavation activities at the surface of the floodplain, upstream or adjacent to the excavation area to encourage gravel bar formation and/or side channel creation. The woody material shall be partially buried to anchor the material during high flows.
35. There shall be no on-site fueling or equipment maintenance performed within 100 feet of the creek banks. This includes fueling or maintenance of portable equipment such as generators and pumps.
36. There shall be no on-site storage of fuel or other chemicals.
Chair Satre: At the last meeting, this item was continued and additional items were requested from the staff. Ms. Camery will cover those.

Ms. Camery: I want to start off by drawing your attention to several blue folder items. We have two comments from CBJ Engineering, one of which was received at the very last minute tonight that I put on top of your booklets and we have a comment letter from an adjacent neighbor. I am happy to provide a quick overview of those items if that is useful or I can pass in the interest of time.

Chair Satre: Did everyone have a chance to read the blue folder items at the beginning of the meeting? Why don’t you cover those briefly, Ms. Camery.

Ms. Camery: So, we have two different comments from Alan Steffert in CBJ Engineering. The first comment is essentially reiterating the need for the project to address the growing flood hazards in the area. The second comment is a little bit challenging to summarize, but essentially saying that SECON needs to come up with alternative mining methods that will address the issues that have been raised, basically saying that there’s lots of different things they can do, and SECON needs to state how they’re going to deal with this. The letter also states that it is in SECON’s best interest to conduct seismic monitoring and has some suggestions on how that might happen. I can go into that particular issue in more detail in my staff report analysis.

The other blue folder item is from a neighboring resident, Mr. Gutleben. Mr. Gutleben has talked about the decline in property values of the River’s Edge Condominiums in the past several years, noting that property values have dropped by 8%. He has also referred to the amount of material that is currently being recommended for removal, stating if the applicant were to remove the maximum allowed, this would be 3.5 to 4 times more gravel than was removed annually during 2011 and 2012, and 7 times more than what was removed during 2010. I’m just skimming through this letter to provide the highlights for you. Mr. Gutleben also discussed the pattern of damage in the A and B Buildings of the River’s Edge Condominiums. Then, there is some discussion in the letter about the distance from the condos, in which the mining has been happening. I will discuss that more in my staff analysis.

New information that the Planning Commission requested, Planning Commission wanted a discussion of the timing window. I can go into that in detail. Also wanted discussion of possibility of a buffer around the condos, and then there were some smaller questions regarding the time of the year that SECON has been operating and the kind of equipment SECON has been using. So, I will start off with the discussion of the timing window and that is the bulk of the new staff analysis. I contacted the Alaska Department of Fish and Game, then the US Fish and Wildlife Service, as well as discussed the issue with the applicant, and essentially the timing window is necessary for protection of salmon. The timing window that Fish and Game based their analysis on is based on the salmon runs, the adult salmon spawning times, and the migration patterns of the salmonids. . The other key reason for the timing window is that the applicant needs to operate at low flow conditions and Fish and Wildlife Service supplied detailed figures on the flow periods in the creek for a period dating back to 1951, and consistently shows that the lowest flow times for the creek are December, January, February, and March, according to the...
current timing window for the project. I’m happy to discuss that more if you have questions. For
the moment I’ll move on to some of the other issues that the Planning Commission requested
information on.

Flood rates go up dramatically both in April and in November, which is unsafe for operation of
the equipment. It also raises habitat problems. The other reason for that timing window is that
the applicant needs a certain amount of ice within the gravel bars to support the equipment. So,
we looked at this from a number of different angles, and again the short story is that the timing
window really does appear to be necessary for a number of reasons and it appears to be
problematic to either begin earlier or go later.

I discussed with the applicant the option of a buffer around the River’s Edge Condominiums to
address the neighbors’ concerns regarding property damage from the development. The
applicant essentially said that this could make the project economically unfeasible. From there,
we really worked to try to find other measures with which to deal with the concerns raised by the
residents. I talked a lot with CBJ Engineering and tried to get their assessment of what could be
done with their experience of blasting in other projects they do around the community, and that
led to four new conditions under the recommendation of CBJ Engineering, the gist of it is that
we would like the applicant to do the research necessary to determine whatever the appropriate
safe threshold is for monitoring. That information would be submitted to CBJ Engineering for
acceptance and then the applicant would then monitor the development during all operations, and
if at any time the activity exceeded that safe seismic monitoring threshold, the applicant would
be required to report that to CBJ Engineering, cease activity until the applicant came up with
some alternate location or some other mining method to bring that activity within a safe seismic
threshold. There are four conditions here.

I discussed this with the applicant, Mr. Short, and he indicated that SECON was not pleased with
this condition, and that he thought it could be quite problematic. I encouraged him to submit
detailed comments explaining what the concerns were, so we could work with that some more. I
didn’t receive any further written comments prior to the staff meeting. So, that’s about as far as
we could go with it. SECON has indicated in various ways that if the project has too many
conditions on it, it may become economically unfeasible to operate. At the same time, the
Planning Commission is required to make a finding regarding property value, potential for
property damage. So, since the first approved project review when SECON first operated, the
total number of recommended conditions on this project is 36 from what we had previously
recommended and the new conditions for this cycle of permit review are addressing the street
cleanup, the icing from the project, and these new proposed conditions regarding seismic
monitoring. CBJ Engineering pointed out to us that it is a code violation for truckloads to cause
litter - CBJ Code 36.30.070.

So, this is the requirement that we addressed, as this is not something that we can pass on, it has
to be addressed, and obviously we received many comments on that issue from CBJ, DOT,
Juneau Police Department and others. Those are our new conditions, and then we have the
proposed conditions on seismic monitoring. We don’t have a complete answer on this, but
clearly we have heard a lot of testimony from the neighbors indicating that this activity may be
directly or indirectly causing damage to River’s Edge Condominiums. We have encouraged the
applicant to come up with alternate conditions, alternate measures to address these issues, if they
are not satisfied with what we have recommended. I have not heard any alternative proposals at
this point.

With that, I would like to back up just a bit to the issue that Mr. Gutleben raised. This is in your
new staff analysis. We tried to make a determination, some sort of assessment regarding how
close to River’s Edge Condominiums the mining activity was happening. (Photo) I apologize
once again this is an old photo, our database is just terribly outdated. So, you can see the site of
the current River’s Edge Condominiums undeveloped at this point. These are the property lines
we have in our database. We don’t know if this is 100% accurate. It’s the best we have at this
point. The applicant is required to stay 10 feet away from the property lines during the activity,
and the River’s Edge Condominiums are required by CBJ Code to stay 50 feet from the River’s
Edge, and it appears, based on this scale, that the property line goes out about 50 feet into the
creek in this section. Based on this estimate, if the survey is even roughly accurate, that means
that the mining activity would be occurring 110 feet from the River’s Edge Condominiums,
because again the property line is extending roughly 50 feet into the creek in this section, and the
condominiums would have to be built 50 feet back from the edge of the creek to meet our 50-
foot setback ordinance. So, that’s where I came up with the estimate that the activity could not
be happening any closer than 110 feet from the property line. Mr. Short indicated that he
thought that that figure was accurate. Mr. Gutleben, however, did his own measurements on the
property and he believes that the mining activity has been happening much closer than that. So, I
don’t have a definitive answer. This is not a licensed survey. It remains a bit of a question in
terms of exactly how close to the condos the mining activity has been happening.

At this point, there are a few other items in there that the Planning Commission had requested
regarding the specific equipment used, the time of year of operation; the applicant indicated that
they have always conducted their operations in January and February. There is also a new
comment from a resident, which I quoted in significant de-
tail, similar comments to what we
heard at the first hearing, with concerns about the vibration and the noise and the property
damage, and wanting that to be clearly addressed in the application. So, that’s what I have at this
point in response to the Planning Commission's request. I’ll be happy to answer any questions.

Mr. Watson: The first one is when we allowed the Saber’s Point permit to be renewed, it is my
recollection that we required the same condition with regards to cleaning the highway street.
The second one that we were involved in was the City Gravel Pit and if my recollection is
correct, we also conditioned the same requirement that they clean vehicle wheels etc. or clean up
the refuse that they leave while they transit from the creek, is that essentially correct?
Mr. Chaney: I believe that is correct.

Mr. Watson: The third question is, if the condominium property goes into the creek 50 feet, then
whose property is the gravel extraction coming from?
Ms. Camery: Well, the project as it was approved in the first 5-year period stated that the
applicant could not mine any closer than 10 feet from a property line. So, that would put the
limit of extraction somewhere in the middle of this gravel bar, but again this was from 2001, so this may have changed. We are forwarding that current recommendation with the current review that the applicant has to stake out the property lands and cannot operate any closer than 10 feet to property line. It is sort of an unusual configuration for this section of privately-owned streambeds, the River’s Edge Condominium property does in fact extend into the stream and that is why they were able to conduct that smaller gravel extraction and rip-rap project that we referred to in the previous hearing.

Mr. Watson: I remember that. Thank you very much.

Chair Satre: But the idea is that if this were to be approved, the conditions require that property line be staked and that no mining activities can occur within 10 feet of that property line?

Ms. Camery: Yes, that is correct.

Mr. Medina: What is the process if any of the conditions are violated?

Mr. Chaney: It could go from a warning to shutting down the project depending on the severity and how easily it could be remedied, but ideally if a project is seriously out of compliance, it will be shut down.

Mr. Medina: In that case, the only time it would come back before the Planning Commission is at the end of the permit expiration to renew the permit, at the end of six years?

Mr. Chaney: Yes.

Chair Satre: Or if the applicant requested a change to a condition and that would be another thing that could bring it back for public review.

Mr. Bishop: Have you ever had a quarry operation or gravel operation adjacent to a D10 zoning district.

Mr. Chaney: I am not aware of one next to a D10. Certainly, the one that was just approved recently was within a D3 zone, but I do not know of a D10.

Mr. Bishop: Can you speak to the applicability of that a little bit, whether or not this is an appropriate use next to a D10 zoning district, whether that would be something that we would seek to do or something we should seek not to do.

Mr. Chaney: Ideally, this is not a good place for gravel extraction. It is next to residential. Obviously, there have been a lot of complaints and that’s the reason we don’t normally have ravel extraction next to residential. The one significant problem that we have is that this section of Lemon Creek has been channelized. It has been dredged and the arms of the banks have been armored. So, the stream is building up over time and if no gravel is extracted from the stream, eventually not that long from now, the stream will fill up to its banks and then it will start to wander over by Costco or maybe into the residential area. As a community, we are going to have to do something. The idea here was that in this very controlled way, we would be able to at least chip away at the amount of gravel that was accreting in the streambed. So, it is not a flood control project, but it does help address or put off this issue somewhat, but I would say that was the primary reason that we were looking at doing something that is not really compatible next to D10.
Mr. Bishop: I spent a lot of time reading the report last week on Lemon Creek and gravel transport area and it occurred to me that gravel mining was only one of the things that was put forward as a solution to the problem, that there were others that were put forward also and one of the principal ones that was also put forward was removal of the bridge down below that was in the industrial area below and that was one of the principal causes of the backup and the flooding potential. Has there has been an evaluation of the flooding potential since that has been removed?
Ms. Camery: To my knowledge, there has not been a re-evaluation from the 2004 study.

Mr. Bishop: One of the other principal things that was advocated for and spoke highly of was doing some armoring on the banks up above or some bioremediation to limit the sediment transport from the transport zones up above. Has any of that been done?
Ms. Camery: Not to my knowledge.

Mr. Bishop: In 1995, Lemon Creek was listed as an impaired water body by the Alaska Department of Conservation. Is it still an impaired water body?
Ms. Camery: It is still an impaired water body.

Mr. Bishop: At that time, it was concluded that gravel mining was the principal cause of such impairment. Has that changed?
Ms. Camery: Well, the proposal was submitted to DEC as part of the regular agency review. DEC typically gives us detailed comments anytime we have a project that affects an impaired water body. They did not submit comments on this project. We held an interagency meeting in which they were present, but they did not suggest any restrictions on the activity.

Mr. Bishop: It also stated that the middle region, Hidden Valley, was heavily impacted by human use and much of the channel was actively eroding. Has that actively eroding channel been remediated at all?
Ms. Camery: Not to my knowledge.

Mr. Bishop: What we are dealing with here is we are saying we are willing to go into this area and do gravel mining because it’s taking care of a problem of potential flooding, but there are another potential solutions to that problem and other recommendations that have been made by this study that we are now using for gravel mining that are just as strongly and in many ways more strongly emphasized because they have habitat enhancements that this project doesn’t have. Another question is do we have a restoration plan for the gravel mining for this particular project?
Ms. Camery: It is interesting that you raised that. The Wetlands Review Board brought that up in their discussion. They felt that that was very necessary. The applicant's response was that they really could not develop a restoration plan until the final stages of the project. The expectation is that this activity will continue for many years through a series of Conditional Use Permits because there is such a large amount of gravel.

Mr. Bishop: The study indicated that prior to any mining excavations, that there should be a restoration plan put together that would follow that plan. So, you are taking the word of the
applicant that they cannot do it until such time that they are done, when our own study says that we need to do it prior to doing the mining. I am very uncomfortable putting a mining plan in place that is supposedly for the purposes of ameliorating flooding potential. When we have already taken out the largest obstruction in the river or the creek, which being the bridge that was below it, we have not done any of the work up above, the bioremediation or the bank hardening, to stop the sediment transport, and what we heard at our last meeting was that the river is filling in with material as fast as we are taking it out and that all of the work that they did over the course of the last mining plan has been filled back in and there hasn’t been any drop in level yet. It seems pointless to have a mining plan without any remediation plan setup and without dealing with the sediment transport from above. All we’re doing is mining the creek. We are not dealing with the impairment of the water body. We are not doing any enhancement of the ecology of the creek. All we are doing is mining without any plans for followup.

Chair Satre thanked Ms. Camery and opened public testimony.

Public Testimony:
Mike Short, I’m the Engineering Manager for SECON. As far as the remediation plan for the creek, as stated, there is really no plan in place at the moment as far as how to remediate it based on the volumes that would be left in place when the extraction is done. You have indicated going up into the middle section of Lemon Creek, Hidden Valley, and stopping the flow of gravel up there. Is the city willing to fund that project? Is that a question that we can talk about?

Chair Satre: That’s something we certainly can’t answer. We have authority over conditions on your permit, we can certainly raise some questions, but we can't decide funding efforts of the city. So, Mr. Short, I don't mean to necessarily cut off your line of thinking here and certainly Mr. Bishop may want to delve into the reclamation question, but we certainly would like to get your take on the new conditions, the vibration monitoring conditions as well as we might have some questions on a buffer in the mining area relative to what Ms. Camery said, so we will start there and see where we can go.

Mr. Short: The buffer around the condominiums, as stated, is 10 feet into the creek, so it is restrictive on our side. If you extend more into our property, restricting our activity there, basically you are taking away perhaps a little island that we can no longer extract gravel from, so I oppose restricting any more egress on to our property there.

Dealing with vibration, I tried to ask the question of Ron King - Is there is a building code or building standard in Juneau for seismic activity? I never got a response back from him. I see that there is literature in there in 2006, something being appropriated or approved. I am not sure what level of seismic activity they are talking about. They are 0.67g (gravity). I don't know how big of an earthquake that is per se. When we get into monitoring blasting and equipment vibrations, you are more or less dealing with PPV, which is peak particle velocity. Most blasting is done in quarries and stuffs.

You are dealing with a range of anywhere from 155 to 200, maybe even 300 PPV. They indicate that the structures are designed to stand that. A magnitude 4 earthquake generates around 2000
PPV. The equipment such as a trenching machine, a large trencher operating 10 feet from a building can generate up to 0.7 PPV. So, your equipment and the earth movement there is very minor compared to other activities. You get into starting to monitor these vibrations and movement of buildings, your environmental conditions actually move buildings and stress them more than blasting from a quarry will and that has been shown through the coal mining industry.

So, setting up a monitoring system there, we can do that as I have indicated. We have the equipment; we have used it before. It is something that we can record and submit to you. I don't believe there is an engineer in Juneau that is qualified or has the discipline to fulfill this, so we’re probably going to go out of the area or maybe even out of state to acquire the engineering technicalities to provide the write-up on this. The question is, is this going to have to be submitted with every grading permit application or would one by the engineering personnel suffice for the duration of the Use Permit?

We are getting to the point of a threshold here as far as these conditions coming into place. If we go too much farther on this, as far as applying these conditions, SECON is simply going to withdraw our application. The neighbors here, they are complaining, even though the noise, it is only 14 days, 20 days long at the most. I understand the vibration. It is annoying, it is a bother to them, and I apologize, but we also provide a commodity to the community here as an aggregate. The other option is for us to import it. We can import it either from Washington or sometimes we can find another source, such as we had a job down in ______ and we were able to get some gravel out down there. Looking throughout southeast, Juneau is unique because it does have gravel. There is hardly any other community in Southeast Alaska that has native gravel, it’s either muskeg or around hard rock. As I have indicated, we are about ready to withdraw the permit.

Ms. Bennett: I want to take a little different angle. I just happen to live in an area close to the Mendenhall Sewage Treatment Plant and about 10-12 years ago, the sewage treatment plant backed up on our neighborhood and my house was one of the houses that was damaged by sewage and it was the responsibility of the City's insurance company to come right out. They did, they came right out, they moved my cat and I out of that house and into a motel and they did the same with 10 other houses in that neighborhood. They sent an adjuster immediately to look at the damage and they arranged for contractors to come and repair the things in my home and they did the same thing with all of the others and I still live close to the sewage treatment plant, it is a hazard to our neighborhood, but the city put in a stop valve in my driveway to it so that if it ever backs up again and that was for human error, but if it every backs up again, it won’t go into my house. There are things that you can do with your liability insurance and your public relations with the neighborhood to reduce the stress on your neighbors of an operation that is next door. I just encourage you to work with your neighbors to make that easy for them to get the repairs needed. I am sure you have liability insurance, right?

Mr. Short: Yes.

Ms. Bennett: It is possible that you can work these things out and I would really encourage you to do that.
Mr. Watson: Mr. Short, I want to thank you for your lengthy time at the chair there and the eloquent way that you defend SECON’s position on this. So, my comments are not addressed to Mr. Short, but they are addressed to SECON. One of my problems as I read this, is a quote from a document from SECON – ‘SECON is willing to bear the expense as long as it is manageable’, so in my mind that leaves me with, well, once it becomes an expense determined by whomever, might not address those issues any more. That is kind of how I would read that as a businessman. ‘SECON understands the need for conditions required for the permit’, keep in mind that each condition requirement is an added cost. So, what you are saying here is due to safety concerns, SECON is willing to bear the expense as long as it is manageable. That leaves me just hanging in the breeze.

Mr. Short: Safety is No. 1 with SECON. We, as a company, Colaska North America has really pushed it on to upper management to ensure safety across the board for all operations. They are pointing to us as being directly liable and for all safety in the business. Yes, we view public safety as part of our responsibility too. We will do our best to make sure that it is safe and that we are managing the gravel and everything on the road, but when it becomes burdensome to the point that these conditions become overwhelming, it’s no longer business-wise economical for us to continue. At that point, we simply say no more. We withdraw our permit and we close down the site.

Mr. Watson: It was me that expressed the concern about the communications back and forth between SECON and the neighbors and the response from SECON is SECON’s business phone number is and that’s great except that I guess I have to assume that SECON is going to have that phone manned the same hours as your contractor is going to be operating and that is a little difficult to believe.

Mr. Short: No, that is our main office number.

Mr. Watson: Yes, but will there be somebody there potentially at 9 o'clock at night?

Mr. Short: Every business day, yes. Last year, we operated for 8 hours a day for 14 days, last January and that was our operation limits and every day during that operation, I was in the SECON office building there.

Mr. Watson: The same hours as your contractor?

Mr. Short: Yes.

Mr. Medina: Have you voiced the concerns that were expressed by the neighborhood at the last meeting to upper management?

Mr. Short: Yes.

Mr. Medina: Have they indicated that they are willing to do a PR program or change or improve communications other than the phone number, which is helpful, but is there a plan maybe to meet with the neighborhood prior to your first day of extraction or if there would be any additional neighborhood meeting that may occur prior to the season when you start.

Mr. Short: We haven’t talked about setting up an open forum or an open meeting prior to it. That is something that can be done as a PR opportunity and to explain the gravel extraction. In this monitoring, we have to set up monitoring on the property line. Ideally, this should be set up...
at the foundation lines on the different properties that are going to be wanted to be monitored, so it all depends on the neighbors on how responsive and receptive they are to this monitoring. Otherwise, we have to stay at our property line instead of the monitoring and then do some calculations as far as a potential impact.

Mr. Medina: At the prior meeting, there was a set of conditions that were in the packet. I am not talking about the new conditions, but the prior conditions, was SECON amenable to those conditions? I am not talking about these new ones, but the prior ones.

Mr. Short: As far as I know, there were no problems with them. Like I said, it is understood that for a business like what we are doing in the area, we need to have some conditions to be able to interact, to be neighborly, that we are within bounds of the conditions that Juneau has placed as far as what’s going on there. We are trying to be a good neighbor, being responsive, cleaning up the streets as needed. There aren’t any regulations that aren’t burdensome on anybody, but they are not unbearable, no, not at all.

Mr. Medina: When you met with the regulatory agencies with staff, you didn’t have any issues with the conditions or the discussions that were issued at that time?

Mr. Short: No, I just asked for everything just to continue forward.

Mr. Miller: In the blue folder item, we had an e-mail correspondence between Ms. Camery and Mr. Alan Steffert, who is with the CBJ Engineering Department, and in it, he says I suggest that you leave it up to SECON to choose a mining method that is appropriate to the conditions encountered, e.g. if the frost layer is too thick for an excavator to break up without excessive vibrations or noise or damage to the equipment, they could try something different. So, this was something that we discussed at the last meeting and is that something that you went back and talked to the upper management at SECON about trying some different tools to initially break through that layer of ice; is something that you would have considered since the last meeting?

Mr. Short: Yes, we did talk about that and basically SECON is not going to go in there and extract gravel when the frost is over 2 to 2.1 feet, we are not going to do it, it’s just not going to happen. It’s too costly for us to go in and do that. It causes too much noise and is hard on the equipment. Ideally, it would be perfect if the gravel is in there, they would come back in a uniform manner and we can just take our equipment out there and mine them when there is no frost in there. That is the easiest application, but realistically it comes in there in various different sediment layers and there are soft spots. So, it is ideal to have a little bit of frost to help ensure getting the equipment back in and out of there without a lot of adverse effects. As soon as we get to extreme frost, no we are not going to mine there.

Mr. Miller: Is there a general feeling about what is the easiest way to break through that ice and have you discussed that. Is it with a CAT and a ripper blade or is it with an excavator with a rock hammer, or is it just banging away with a bucket?

Mr. Short: The easiest way is probably with a combination of CAT with a ripper and the excavator between the two of them tearing it out. Personally, as a manager, I do not like to see equipment and excavator bang on the ground. Basically, you are destroying every pin up to the linkage by hammering it out, and you will start having your bearings go out on you and it is just an extensive repair. So, personally, if you can’t rip it out by using raw force with the hydraulics,
get a tube in there like the D9 with a ripper and sink the ripper in there and try pulling it up with that. It doesn’t cause a lot of impact and it’s not a huge amount of jarring to the area.

Mr. Haight: What would be an ideal method for seismic monitoring?
Mr. Short: I did some reading on the discipline and as I said, ideally, if there is a structure in question, you actually place monitoring devices on the different zones of it, but it would take the professionals to determine them. They have little micro-sensor gauges that measure distance of cracks and they actually mount them on the opposing sides of those cracks to monitor how that crack behaves and reading through some of the studies, they showed in a 24-hour period, just the natural settlement of the building could have potentially 20,000 micro-millionth of an inch, so basically 20,000 would be a little over 64th of an inch movement naturally overnight cycle. That equates to the same crack if you were to drop a backpack on the floor would generate about 500 micro-inches versus a blast in a quarry that they were recording at the time that generated 155 micro-inches separation of that crack. So, they get into quite a bit of detail there. There is pretty sensitive equipment. There is some literature out there as far as ranges of acceptable vibration tolerances, different media, sheetrock and gypsum can withstand.

What I see happening is that the City is asking me to provide an engineer, but to truly do it, it has to be in conjunction with the different residences and when you start talking about the different residences, how many people am I going to have to set up these monitorings on, 100? How many condos am I going to put these monitorings in? Each one of these condos? It starts getting to be a huge expense and at a certain point, it just becomes cost prohibitive for me to go forward.

If I take my monitoring that I already have for blasting, I think we have three of them, and we set them up on the perimeter of the property there and monitor them and have an engineer come up and give us the parameters as far as what we can do one time and then we will adhere with them - we can do that. As far as going to the extreme and we start cycling through because these monitors will be in there all the time, we are actually mining out there, so potentially 40 days, they will be into these residences taking readings every day. On that note, I would suggest that we simply put it up on the perimeters. There are engineers. There is somebody here in town that is actually trying to set up a business for blasting consultants that have contacts with people that deal with this professionally. We could have them come up and set us up for one time and then we can go from there. That’s why I asked about the seismic - What is the seismic that the building codes for this town are set up?

Mr. Haight: I suspect there are none. So, basically given the idea that the terrain does not change other than the bit of extraction that we have, but basically the geophysical nature of it does not change. Once you set it up and establish a benchmark with another engineer, it seems to me that you could maintain that monitoring profile without a lot of additional labor.
Mr. Short: That’s correct. I agree with what you are saying. Once we set up the baseline, have them come up, we monitor the site, choose some residents who are willing to comply to have the intrusive nature of what is going on and cycle through; because what they do is they will monitor the environmental cycle over a period of time just to see what happens from day to night happens inside the house or even over part of a season there to get the variables there. Then, they will start setting baselines as far as what happens, and then they can track how our equipment
operates inside there. That's basically how they do it for quarry blasting and coal mines to see how it impacts the town ground. What I read is that people tend to be extremely sensitive, as we are bipedal, standing up and balance and we are very sensitive to movement, especially when it is noise, and in that it is very hard even for professionals without monitoring tools to really quantify how big a vibration is. So, I can understand, like I said, vibrations disrupt the soil, but is it doing damage to the structure? No, I don’t think so.

Chair Satre thanked Mr. Short and opened public testimony

Public Testimony:

**Michael Dau**, 1901 Davis Avenue, River's Edge Condos. First of all, I wanted to address the type of equipment that they are using, because last week it seemed like it was downplayed. I would like to let you know that I was in the Combat Engineers, I drove a bulldozer, I have driven heavy equipment, I have worked with Jerry Harmon, so I know mining equipment, and I am telling you they had a D7 CAT with a ripper down there trying to tear it open and they had a mining hydraulic ram down there on its own treads, with its own engine at a 45-degree angle with a ram going through it, so it wasn’t just an excavator with a little thing going thump, thump, thump. So, I do know what I'm talking about when I am saying the type of equipment that was down there.

I also wanted to elaborate since we’ve got a better picture. Pointing to the picture, he explained where they live and where they dug the pit. ‘This is A Building right here and we live right about here, and this is where they dug the pit, right here’. It is very low water, so the creek is a lot less, but this is the one where they were using all the heavy equipment right here, which is like right in front of my deck, which is why I am telling you it was like a three-day earthquake, and it is amazing that everybody in the A Building is complaining about the same type of damage, it is all tiles popping up off the floor, fireplaces moving, cracks in all the major support beams, and it was all reported at the same time right as this happened. So, this is not just coincidence. That’s all I want to say.

I just wanted you to understand I know what I'm talking about when I am talking about the equipment and it is funny that they are downplaying it because, they don’t even do it, the contractors that come in here, they are telling you everything you want to hear, so that they can get their permit, then they turn around, subcontract it out, the subcontractor has to get 35 cubic tons of gravel out in so many days. They are going to do what it takes to do their contract.

Mr. Medina: You mentioned the damage to your condo and two other units. Have you had an engineer document the damage in writing?

Mr. Dau: We haven’t had an engineer. When we first contacted SECON, through the management company that is no longer our management company, SECON said to have the developer, which is the contractor, come out and take a look at it. They took all kinds of pictures, we submitted our forms into the management company, and the last we heard was that they came back and said it was normal settling. Since then, we bought a rental unit and I've had two contractors in there to do work on some doors and stuff that were damaged, and we asked
them about it, and they said that normal settling occurs in the first 1 or 2 years, this is 5 going on 6 years later, they took a look at it, they said it’s not normal settling, and especially if you take a look at the shear tears, it goes up and down, like it was moved up and down, it’s not just a crack, and I’ve still left it there. Some of you can see it’s a shear tear, and that doesn’t move your fireplace an eighth of an inch back from the tiles where it was set, and there are several places that the fireplaces have moved, tiles have cracked, tiles have come loose, all the main support beams have cracks all the way down them now. Right next to the fireplace, the entire wall to the ceiling, all the way down, is a shear tear on one of the seams. I was there all three days. I had a medical condition, so I wasn’t going anywhere. So, I just wanted to clarify so that you understand.

Ms. Bennett: Have you ever gotten an affidavit from the builder that you were working with to the effect of the damages for your house or your condo?

Mr. Dau: No, everybody was going through the management company and we don’t know what happened or why everything got dropped. Nobody said anything, I don’t know what happened to the pictures, I don’t know what happened to the forms that we filled out. We have a different management company now and so I’m not sure where that all went. I would like to know.

Mr. Bishop: Mr. Dau, you said you were there all three days, so you are inferring that this damage happened in the course of a three-day period?

Mr. Dau: Well, it was when they were trying to bust through the ice on that last island that I pointed out, and they couldn’t get through it, they started out like you said with an excavator banging away on it and the next day, they show up with a ripper, and it does not work because it was very thick, and then that’s when they showed up with the hydraulic; I don’t know if it was a drill or a ram, and went around the outside and then pulled the big chunk out. We thought it equated to the size of a small city bus and it was thick, it must have been 4 feet of frost that they went through to get to that gravel.

Mr. Bishop: But the damage incurred? You could see it taking place?

Mr. Dau: Yeah, I had to vacuum up the dust off the windowsill every day when it kept coming off the crack.

Chair Satre: There have been several new conditions added by staff to approve the permit, do those new conditions, especially in regards to vibration, plan, and monitoring, answer your concerns or are you still opposed to this project?

Mr. Dau: I am not sure, I can’t tell you what the vibration monitoring is like, how they are going to do it, and I just don’t have the knowledge to say it was enough.

Chair Satre thanked Mr. Dau for his comments.
Phil Gutleben. B4, 1901 Davis Avenue. I thought I’d clarify a little bit about the e-mail that I submitted and one possible correction I should make. I mentioned that Duane Gates had contacted SECON; it may have been Bill Heumann who is the developer. I was not involved with the Homeowners’ Association at the time, and since I live in B Building there has never been any mining in front of that building, and I was one of the first owners there. Then, there was a question about the distance. He pointed to the picture and said explained where the mining had taken place – almost 75-100 feet. He recalled walking his dog when SECON was staking the bank in December of last year and pointed to the area where it was done.

I do understand that mining gravel might be appropriate, but it just seems kind of ironic that they get as close to the buildings as they possibly can and maybe the gravel is better there. I also walk upstream sometimes in the low flow, and if you go up adjacent to the prison, you can walk all the way up adjacent to the impound lot and almost all the way to the bridge which goes to Hidden Valley, but there are big rocks up there, not really gravel. I'm a trained mechanical engineer myself and worked in that profession for the first 20 years of my career, not in construction, but I'm still a mechanical engineer, and as you look at a stream with a lot of flow, there is really rapids up there, all the smaller stuff is not going to settle down, it is going to move downstream, so that’s why, in my logic, we have finer gravel and sand down all the reaches of the stream.

As I said in my comments, I haven’t had any damage at all to my building or to my unit, and my neighbors I don’t think have had any significant damage. Mr. Short said one thing that it only requires 14 days here, but that is at 9500 cubic yards of material as they go with the full 35,000 multiplied by 3 or 4, and then you're talking 50 to 60 days. So, the potential is there for that.

One other thing I wanted to mention is and Mr. Short mentioned this too, if you wait too long and the frost gets too deep and you have to jar the ground more, what if they started just a little bit earlier, like in December rather than middle of January when the frost wasn’t quite so thick? Certainly, it gets cold here like it has been recently here, but it’s not going to freeze down a foot or 2 feet in 1 or 2 days when they are not working or overnight. So, then they would have less frost to break through.

Chair Satre thanked Mr. Gutleben for his time.

Sally Caldwell. I live right in the center of the A Building. I just want to acknowledge that I appreciate SECON as a business and so they need to be concerned about their profit margin and they need to be making decisions that are good for whoever their investors are. So, I appreciate that. I also appreciate that I heard earlier that housing is acknowledged to be an issue. In Juneau, I think that’s pretty general knowledge. It was comforting to hear that the City and the Planning Commission is really being attentive to the issue of housing. I read some of the e-mail communications back and forth and an e-mail from SECON on December 6th or so - SECON is talking about the history, and I appreciate history, but the times have changed. Housing is built there now and it wasn't when they first started and there is a plan to build more housing there and Juneau needs the housing and the plan, as I understand, is Affordable Housing. So, a comment that was made now was that Juneau has a lot of gravel. It is a resource that we have. I can't
Imagine that Lemon Creek is the only place that has that resource to offer the community. I appreciate SECON owns that property. They would have to negotiate something if they didn't own other property that they could extract gravel from, but that resource is available. This is Alaska. Most of the area is wilderness. We happen to have human beings that have gathered together in this area and it may be time to move this operation out of that area. I really appreciate the comment also about looking at other methods of addressing the various issues that have been raised. We are very fortunate now, we've learned so much over the years, our awareness and sensitivity about our environment has increased and along with that, we've got a lot more technology than we had in the past and this may be the time to really explore that. This conflict may be an opportunity that presents itself to us as, okay we need to explore that. Any decision you make like that is going to have a cost to it and it is a rough time to be spending money, but the City has to set up its priorities and make its decision from that.

The four conditions that were mentioned, one was the applicant would determine a safe threshold and if that’s what the Planning Commission decides to go with, I just have some concern about how is that word ‘safe’ going to be defined? It concerns me that we continue in a second meeting to have some discrepancy in SECON’s report about what’s happening and the report of people who have actually walked the ground and measurements about what’s happening. That’s a concern for me. So then when a condition states that the applicant is going to determine a safe threshold, if we have got some discrepancy, it just causes me concern that establishing a safe threshold would be in the hands of the applicant alone.

Then, another condition was that they would monitor the vibrations; that’s outside of my area. I just had some questions listening to the comments about monitoring vibrations and I just wondered if you have some established measurements, which were shared about vibrations in relation to earthquake and things like that, it would seem to me that you would not want to take that information, but you would want to take into account the media that’s underneath these buildings. So, an earthquake’s impact on a building that is on a certain kind of media, would seem to me to be different than on another kind of media. So, to me, that would seem important. Putting a monitor away from the building, I didn't understand that to be really reasonable because it is the building that we are concerned with being damaged, and so to put it out on the sand bar or somewhere else, I am not sure how relevant that information would be.

Another condition was to report any measures that go over threshold and then to stop as it goes over the safe threshold. We identified last time an issue about communication and I feel that some of the reports that have come today and some of what I read in the e-mails that have been going back and forth, it seems like communication is still a bit of a concern and so I was thinking one way of facilitating communication might be, that those reports could go to the Homeowners’ Association, so that SECON can communicate directly with us with some of the reports and inform us. We don't have any authority to give any permission or deny anything, but just to have open communication and keep us informed.

The second discrepancy is, where is this located and where is the property line and I appreciate that the property line of River’s Edge Condos goes into the creek itself and so then the measures are in relation to the property line that is out in the creek and again I am just not sure how
relevant that is because we are not talking about what is the impact on that property line, which is in the creek. Our concern that we have raised is the impact on our home, which sits back further.

Our Homeowners’ Association bore the expense of the initial kind of survey of damages to the property and we did that. We’ve tried to be cooperative. That was a suggestion that came to us from SECON, if I understand correctly, and we tried to comply with that and to ask us to continue to bear the expense and the time of the task of surveying the property damage. I would like to see the burden of that shared. The property damage in my condo is not as extreme as what Mike is talking about, I am in a different location than his. I do have cracks in my tile and on my fireplace, I do have a drop right at my fireplace where the floor has dropped and in my support beams I do have cracks. They were not there and then they were there. There is a real tight correlation between when they appeared and the mining that went on and that is all I can say, it is not my area of expertise, but it causes me concern.

I also wanted to just say that this is my first experience with the Planning Commission and just sitting through the entire meeting, it has been so nice to see the diversity, to see that there are different people, different backgrounds, and different views and who vote differently. I was thinking, when I vote for people, that something I think about is when there is a group that I really want the diversity to be maintained, so that we kind of cover all bases and I appreciate the questions that the Commission has had. They have been very thoughtful and very thorough and then the members have done their homework. I felt like a real effort was made to be responsive to the issues that were brought up.

Chair Satre thanked Ms. Caldwell for being present for the meeting.

Mr. Bishop: Can you tell me the timeframe that you saw the damage on your condo take place. Was it the same time that the extraction was taking place?

Ms. Caldwell: It was. I think I mentioned last time, when I first heard the sound, I thought it was an earthquake and coming from Fairbanks, wasn’t much of a problem for me. Then when I mentioned it to my neighbor, she said no, it’s not an earthquake, that’s the drilling that they are doing and then there were a few days of drilling and then neighbors were saying our property is getting damaged. You need to take a look, and so I went around and took a look and there it was and that was disappointing to see.

Mr. Medina: Did you have a licensed engineer document the damage and get his professional opinion on what the cause of that damage was?

Ms. Caldwell: No. I did not do anything individually. Our Homeowners' Association responded to the suggestion and then we had it changed. We had a change in managers. So, during that change process, I do not know if our Association has asked the old manager. I think we did and I am not sure about the response. I think the response wasn’t clear from the old manager about it, so there was a lot of interest and then nothing, and then where did that go, what happened to that. I do not know if the manager dropped something or if he was just waiting for a
response and then the transition happened, but no it was our Homeowners' Association that took responsibility for taking care of that.

Ms. Bennett: You haven’t been compensated at all for any of the damages that you had?

Ms. Caldwell: No, because I think, if you look at stages, we haven’t even really established how much damage there is and what the damage is from. I would have expected settling to have already taken place in the early years of the building, but I am open, I would just like for whoever assesses the situation to be someone who is experienced and could give a good assessment about what kind of damage is this. Mike is talking about shearing, that makes sense to me. It’s different than what you would expect to see with settling, but this is not my area. So, a step that needs to be taken is we need to just assess the conditions and see if there is damage and then someone needs to decide how did that damage happen and then move from there. Our expectation, under the old management, was that they would do an initial evaluation to verify that there are enough similarities, that there was a correlation in timeframe that makes it reasonable to suggest that we need a more thorough investigation by very qualified people. We did that and we felt that there was evidence there that justified a request for a more thorough evaluation and so that’s sort of where we’re at.

Dana Whiteley. We rent out Unit A9 that we do own that and we live there. We are the original owners and then we just moved this last year; so, we were there for 5 years. We were there when this drilling was taking place every season that they have done it. I guess our unit has not had damage, so I am not as concerned in that aspect, but I know that other people have expressed concern for that and I can see how it could cause damage. I think a lot of it depends on the location of the unit in comparison to where the mining has taken place. My thoughts are that we should explore the other options for the flood control knowing that there are other recommendations. I think it would be beneficial to explore those options and maybe do another report regarding the flood risk considering that that bridge was taken out and see if it’s still as big of a risk factor, because the big push for SECON to get this mining permit is that it’s going to be for flood control, and if that’s the case, obviously our condominium has shared interest in that because we do not want to have flooding at our building obviously, but as my husband mentioned the last time, there was some kind of risk of flooding before, but there hasn’t been high enough rise for it to cause flooding in that area. I just want to know what that actual risk is and if it’s still as much of a risk factor and if there are other options that can be explored and if there can be mining farther upstream because it sounded like the last time when they had this meeting, that they were exploring getting a permit farther upstream to do mining up there. That would be, I think, better for everybody because then they are not as close to residence and owners who would have concern with this.

I understand that there is going to be noise with this operation, that’s not really my big concern, although it is obviously an annoyance, it is the shaking and like everybody has mentioned with the ground, the seismic monitoring I really have no idea whether that would help, but Sally brought up a good point about it being 10 feet from the property line versus at the property of getting different measurements and I do not know if they can factor in for those differences, but it’s not really capturing to me our concerns of damage that might be happening at the building.
itself. I think everybody is concerned and what they would like to do is just have it be moved farther away from our buildings. I think that would alleviate a lot of the concerns if they could do a different gravel bar, if they could be farther away from the buildings. I do think that would really help. That was my main concern.

Mr. Haight: Do you have any objection to positioning the seismic censors at the building itself?

Ms. Whitely: I do not. I think that would be a better way of measuring any impact or any damage that might be done. I have no idea whether the damage is from settling, whether it is from this activity that they have been doing. I just know that it was very jarring and I would think that it would be good to have an answer of whether that’s the cause of the damage or not. A lot of people tend to think so, it is very coincidental, the timing of everything, maybe it’s just making things worse with normal settling. I really don’t know, but I think that it would be much more beneficial information if it was located at the building rather than at the property line and it sounds like SECON really does not want to go that route because that would be a lot more work, there would be a lot more cost involved, but I think that would be a better option.

Mr. Bishop: You stated that it was very jarring, can you explain that statement a little bit?

Ms. Whitely: It was obviously shaking our house and for example, I have a stained glass piece on my window and it was shaking back and forth to the point where it was going to fall off. I am not there all day, but when I am, the jarring happens when the excavator is pounding the ground and shaking the whole building. I haven’t been there the whole time, but that was our experience with it and this was not this last season, it was the season before. So, I guess that would have been in 2011, the most damage.

Cynthia Day, 1901 Davis Avenue, lives in A10, just purchased A11. I am going to say Mr. Medina to answer one of your questions and I kind of had a little bit of an epiphany. When we purchased A11, there was no visible damage. There was some slight cracking. It kind of looked familiar, but A11 is not the townhome style, it’s a three-bedroom all on the upper levels. So, maybe it’s a little more cushioned as the three-bedrooms, I am not sure. I can tell you though that if there were damage to that unit, we would have had the seller fix it and they did have to do some touch-up in some places with filler and paint. This last winter and I am not exaggerating, a quarter-inch crack showed up in the stairwell support beam. I don’t believe it’s settling. I also wanted to say to answer your point about why have we not followed up with our management company. One, like everyone says, we changed, things have changed. This has been based on budget. I’m not sure what the other considerations were. I guess we thought things were being followed through on in good faith. It was just at this last meeting that we learned that SECON and they clearly stated at this last meeting, November 27, 2012, that there was no response from the management company. Then why didn’t SECON, in good faith, follow-up? I wasn’t aware of that. We have been chasing after this year after year. We thought this was coming to an end and here we are possibly going into another six-year cycle. Property values are going down. There was a fantastic article in the Empire that brought attention to our condos that we did not want. It is not just our association. There are now 21 of us; we are small. I want to remind you that there were other people from the neighborhood there as well in writing and here physically present. So, it’s not just us. We’re not the big bell ringers, but we had damage. I think we all
agree this is no longer flood control, I am going to call it a money pit. Somehow, it just happens to be happening in front of our building over and over again. I did talk with DEC. This is an impaired waterway. Thank you, Mr. Bishop for your time. Thank you Teri for your research. I think a lot of folks are now beginning to understand what’s happening versus what is supposed to be happening versus what people say is happening. There is a lot of discrepancy here. In the meantime, owning two pieces of property, one is a rental and one may very soon be a rental. I don’t know how much vibration is too much.

We do not feel the dump trucks or the equipment there because there is no vibration. When you are talking about SECON or the people that are working with you in the river, it is an incredible shock to the ground, and I don’t want to keep bashing a point, we have talked about this a lot. I don’t understand that if this is a mining operation and they’re doing the City such a great favor, and don’t tell me there is no money in this for SECON, why does the government not have this on their list of flood zones, it is not. Yes, DEC does say that this is an impacted river and a waterway, there needs to be someone paying attention to this waterway. At the same time, if SECON is going to be digging in the river, why would they not move away from the condos, why would they not dig here (pointing to the picture)? Then the city gets their gravel, SECON gets paid for it, the waterway is opened up, a channel is opened up. Their answer is, it is too much work, they don’t want to be in the alders, they just don’t want to. It’s easier to keep digging pits over and over and over again to get the better gravel for lack of a better explanation.

I would agree with somebody coming and doing some bioremediation of the river. You can't stop the slides that have happened over the course of the few years, when you do fly over, you can see the slide scars, that’s going to happen anywhere. River damage, river changing, it happens everywhere. Gold Creek is shored up with concrete, that would never happen in this day and age. Mendenhall River is shored up with rip-rap and cars, and that was not a homeowners’ expense, that was our city taxes. One of SECON's very aggressive statement was if we don’t do this, this is going to flood, I am wondering how much you are changing the river by the pits that you are digging, number 1, and number 2, I have no evidence that it has flooded and you tried very hard to find pictures; high water - yes, especially at high tide and fall storms, but you were unable to find flooding pictures. I am just not convinced. I do feel, however, that if we were in a dangerous situation, somebody came in and said, "oh my goodness the river has changed a lot, we're going to have a flood." I trust my City would be there to help with remediation, bank stabilization, it has happened in the city before, it wouldn't be a first time.

Mr. Short brought up quarries and blasting and I just wanted to make the point that quarries are not residential zones. The ditch digging that I referred to is most likely during construction and that happens during the summer and fall when the ground is softer. I just want to say that there have been so many provisions put forth, from the water coming out on the roads to the vibration to SECON being in the waterway. I think after a while you have to realize that this might be another Auke Lake. It might be another Chuck Keen, it might be another Robert Duran, things change. We are not here to take food off of your table, things change, and I just want to thank you very much for your time and your focusing on this issue and I just want to come to some resolution.
Chair Satre thanked Ms. Dau for her comments and closed Public Testimony.

Mr. Short: Well, I just found out why the Building Association never got back to SECON, because they found out that it was settlement through the gentleman before me. SECON instructed them to go and get a building contractor to go and evaluate their building. They never responded back to SECON, never came back to us about what their findings were.

As far as quarries and residence, it is typical of anywhere in the nation, most quarries and extraction zones are placed in rural areas and in zoning where communities develop around them, we end up with conflicts. I don’t think the people are aware here that the City is not paying us to extract the gravel, this is at our expense, then we turn around and sell it. This is simply a Use Permit to go on to our property and to use it for that purpose.

As far as the ground movement, understand the ground, when you impact an area, it’s like taking and throwing a rock in a pool, the waves move out at a uniform rate, so that damage should be all around that impact zone. The equipment we use doesn’t generate that much energy into the ground, even though I said we used a D9, which is an 85,000-pound machine versus the gentleman said we used D7, which is a 55,000-pound machine. They are heavy, they do vibrate the ground, but as far as causing structural damage at a distance, that takes a lot of energy. We are familiar with earthquakes. You’ve got to get the magnitude there to generate that type of earth movement versus equipment operating in the neighborhood.

Mr. Medina: Mr. Short, I just wanted to clarify that the purpose of this permit is for gravel extraction and not flood control; flood control is a secondary benefit, is that correct?
Mr. Short: Not true, it’s either we remove the gravel or the City goes in there and does something with the gravel. As Mr. Bishop said, the RediMix Bridge was removed from the lower reaches of the Lemon Creek; that alleviated the flooding from basically the State Bridge down to the tidal waters where it was. Above the State Bridge, as you read in there too that there is concern about how the sediments are forming around the footing there. They need to change how the rip-rap is laying in there apparently as a few reports stated. It identified basically from where it comes out of the canyon down to the tidals as the deposit area, all the reaches there are from the alluvial gravel from upper Hidden Valley.

Ms. Bennett: I just want to clarify that the damage that the people here in this room are talking about occurred in 2010 or 2011?
Mr. Short: I believe they are talking about 2011.

Ms. Bennett: There is no settlement of the damages?
Mr. Short: No.

Ms. Bennett: So we are asked to approve 6 more years and yet there has been no resolution to the conflict that people are talking about?
Mr. Short: They never came back with any claim.
Chair Satre: Ms. Bennett, to be fair here, certainly we have claims, we have claimed damage. It is one of the reasons we extended the hearing for additional information; yet that’s getting into conflicts of two private property owners and I don’t think we have the information to balance the one said, the other said argument and to go too deeply down that road….
Ms. Bennett: No, I don't intent to. I just was clarifying that it has been over a year now and still is unsettled.
Mr. Short: No, there have been no claims submitted.

Mr. Medina: I just wanted to state that there has been no documented evidence by a licensed engineer as to what caused the damage and the fact that no file for damages has been submitted to SECON. Is that correct?
Mr. Short: Correct.

Mr. Watson: How far upstream does your property go Sir?
Mr. Short: Ralph’s Way, I believe, up in that area.
Ms. Bennett: And that was in the previous presentation, if I may skim forward to that.
Mr. Watson: That will help me, especially it goes upstream to those islands….
Mr. Short: Basically to the edge of the Fisher there (pointed to the map).
Mr. Watson: [Referring to the map] And you come all the way over to this shore line, over to Mr. Thomas Hart's property for lack of better description, you come over to that river edge or creek edge.
Mr. Short: Yes [explained the property lines].
Mr. Watson: It looks like a cut bank at one time……
Mr. Short: no, if you look at the old photos, the stream travels like a snake…[pointed to the map]…this road here is called Lemon Street because all this area was part of the streambed.
Mr. Watson: So, basically the same soil composition in that whole area there?
Mr. Short: That whole area there, all the gravel has been removed.

Mr. Miller: On the seismic monitoring, would you clarify your position on whether you prefer to monitor at the property line or do you prefer to monitor at the building?
Mr. Short: What you are really trying to do is alleviate the litigation, right? So, personally it should be on the structure that you’re looking for the potential damage at, but really it comes down to where does the engineer that has the expertise in the field or where do they put the monitoring device. In my mind, it should be on the structure, but to go on private property, how do you direct me to go on to somebody’s private property and put a monitoring device. We have to get permission from the property owners and that’s what I am saying, how do you do that and then how many property owners will we have to put monitoring devices on?

Mr. Miller: Well, it sounds to me, in the testimonies, that they would also agree that it should be on the building, so maybe that won't be such a hard…..
Mr. Short: I agree. If they are willing, yes, in my mind that is the proper place to put them.

Chair Satre: What is the will of the commission?
MOTION: by Mr. Bishop to approve USE2012 0019 and accept staff findings, conditions, and analysis.

Mr. Bishop: I will speak against the motion.

Chair Satre: Just real quick to clarify, these will include the 36 conditions in the December 6th staff report.
Mr. Bishop: Yes.

Mr. Bishop: I think tonight we’ve heard from all the neighbors that there are specific things that are out of character to a residential neighborhood, noise, impacts, damage to their habitats, to their residences and I think that’s important, and I think it’s not appropriate to have these uses adjacent to that, that are damaging and impacting their way of life. I don’t think that we can make a finding that it doesn’t decrease their value or certainly that it is in harmony with their life there. I don’t think that we can make that finding. Further, I think that we cannot make a finding that it complies with the Juneau Coastal Management Program nor does it have impact to the environmental integrity or ecology of Lemon Creek. As I said before, Lemon Creek is listed as impaired in 1995 and continues to be such and gravel mining was listed as the principal cause of this impairment. What we have before us today is another gravel mining operation and we don’t have a remediation plan or a follow-up restoration plan for such. What we have is a plan or is a study that tells us we need such, but we don’t have that. We don’t have a mining plan. We are far into the season where we need to already be digging. We don’t have a mining plan as far as I recollect hearing yet. We don’t have the gravel bars staked out; it needs to be staked out. We have problems without solutions. I don’t see how we can approve this application at this time. I do believe that something needs to be done in Lemon Creek. I do believe from what I’ve heard and what I’ve seen, that we do have a deposition zone and we do have a problem in this area that needs to be dealt with, but I don’t think what we have before us is a solution that’s acceptable. I think the impacts are not worthy of our approval. I think what we need to have is a complete package before us before we can approve this. We need to have something that does not impact the neighborhood as this has shown to have done and it has solutions to the problems, not just continuing them.

Mr. Medina: I will speak in favor of the motion. I think staff has done an excellent job. Ms. Camery has gone, what I would determine, above and beyond the call of duty to try and alleviate all of the concerns. I will remind Mr. Bishop that a meeting was held with the regulatory agencies and they have bought off on it with the conditions that staff included in the report. It is appropriate according to the Table of Permissible Uses. It will not materially endanger the public or safety. It conforms to the Comprehensive Plan, specifically Policy 5.9 and 7.16. It also complies with the Juneau Coastal Management Program and this is an operation that has been going on for years. I agree with you that it is a difficult situation because the residential neighborhood is right adjacent to us, but this project is on private property owned by SECON and I have a hard time telling them that they cannot continue with an operation that they have been doing for several years and it complies with the policies of the CBJ Code and the corresponding plans that I have mentioned before.
Mr. Grewe: I'll speak in opposition to the motion. I have a little bit different take on it than Commissioner Bishop. This is really a planner’s challenge, I was going to call it planner’s nightmare. It’s the one that I’ve been thinking about since our last meeting because we have two contrasting uses next to each other, industrial and residential. With the channelizing of the creek over time, allowing for housing and other developments to happen, we just heard a comment about how Lemon Street is Lemon Street because the creek used to meander over there decades ago, but clearly that valley likely would have been a braided gravel channel without human intervention.

We also have a valuable, high-demand commodity, gravel, we are blessed with it here in Juneau. We have condominiums built after the gravel extraction activity, but we have a changing community, a community that’s slowly growing over time, a community that needs housing. So, with this challenge, you pick up the staff report and Teri has given us everything here to really give this good consideration and I look to it for direction and mostly I look to it for application of our Land Use Codes with this application. Per the Table of Permissible Uses, Sand and Gravel Mining in Rural Reserve and Industrial may or may not be allowed depending on compatibility with surrounding land uses, so our surrounding uses are residences now. So, how we deal with that is we do it with the conditions to make it compatible to mitigate the negative impacts. There are 36 conditions now and we are asking ourselves, is this enough to make gravel mining compatible with residential. Then we add on monitoring as part of that 36, okay, so maybe this is the ticket, because all the prior conditions to me is actually about running a good mining operation in that area. I read through each one of them again tonight and prior to the monitoring, these were things that should be done, if you are running a good operation in a residential area, if you are respecting the neighbor's property.

We had a comment last week who said that he didn't want to provide a NIMBY comment as in Not In My Backyard, he wanted to say respect my backyard, and so all the conditions prior to the monitoring were about that. You add on the monitoring, is it making it compatible? Is the seismic vibration, noise, whatever kind of monitoring, no matter where you put the instruments, does it make it compatible? I don't believe so. I think we’re trying to shove a square peg down a round hole.

In this one case, we have SECON's opinion. We have lack of a licensed engineer's report that’s conclusive on the homeowner's damage, but do we really need that? I do think there is a correlation here between mining and damage to the homes; or there is enough there to make me suspect that the conditions we put on there, cannot make residential and industrial use compatible in this case.

Let me just speak to the 5th criteria. The decreased value or be out of harmony with neighboring properties, and Teri writes about noise, we are going to mitigate noise by reducing the hours or putting constraints around the days and the hours and last week I was thinking this helps and maybe we do need flood control. Flood control - I think Commissioner Bishop really spoke to that. That is a problem that requires probably a few different solutions to be looked at, but perhaps just calling for mining in front of residential is not the best solution for that area, for the residences or our community. Mostly, I don't feel 36 conditions really address the home
Mr. Miller: The issue of the potential for flooding etc. in the stream is whether we should be looking at other means of doing it. I think maybe we should be, but right now, it is being done for the community by a private contractor at their cost and at their risk and at no cost for the community. The list of conditions was thoroughly vetted by all of the different agencies as pointed out by Mr. Medina and then the last round of conditions were really meant to address the concerns of the immediately adjacent neighbors. As Ms. Grewe pointed out, there probably is some correlation to the vibration that was caused by the mining activities, but it hasn’t just been SECON’s mining activities that took place. There was also the emergency mining activities that took place by the developer that took out that bank and mined the whole island and then did a whole rip-rap embankment with no oversight, so nobody really knows what happened then and what the damage that occurred at that point. As Mr. Satre pointed out, as far as who is liable for it, I think the best way to address it is to get on it and make sure everybody sees where it is and whether you can go back because the property management company dropped the ball, that’s a terrible thing, but who knows where it’s at and what they can do about that. Right now, what you can do is you can put the monitoring out there and you can put it at the building as they said they will do. I think the key is that prior to the issuance of a grading permit, the applicant shall provide a vibration control plan that includes the maximum safe threshold for seismic activity at the nearest adjacent residential structure to the operation as established by a licensed engineer. It is very clearly stated. It isn’t going to be for them to just arbitrarily decide on something. It’s going to have to be something that will be okay and then if they don’t need it, then they are going to get kicked out of there, they are going to have to stop and after they figure that out and what is going to have to happen, they might decide, it’s just too expensive, we can't do it, but it’s going to be up to them based on this condition that they have to do it. So, I think that we have addressed the concerns and I think that with the new conditions, I can vote in favor of this application.

Mr. Watson: I find myself in agreement with Commissioner Bishop and Commissioner Grewe on this one. Just a couple of comments to support my position - This whole application, unfortunately, it protects the chum salmon, it protects the coho, does all those things, but it does nothing to protect the public or the property owners. Having said that, that river and the permit to take gravel was in place when those condominiums were built and it was the responsibility of the developer to disclose that and the appropriate comment would be that, yes it could be disturbing the quiet harmony of the neighborhood, but again that is not part of my reason. I do feel that it will decrease the value of the property. Why do I say that? One of the residents stated that an article by the Juneau Empire or the whole community knows that there is a problem there. Now, when a property owner goes to sell, they are going to have to disclose damage. They are going to have to disclose the noise and every realtor in town is going to be well aware, very much similar to Simpson Street, and will be for the rest of our lives as a reputation. So, I do feel that in this rare case, it will decrease the value of the property. I further find that it is unusual that the only place that the SECON Corporation, not Mr. Short, feel that the area they can decrease the possibility of flood is directly from the condominiums when the
whole stream is subject to flooding, so those are my reasons to Mr. Chair for supporting Commissioner Bishop's and Commissioner Grewe's position.

Mr. Haight: This is the same dilemma that I brought up earlier this evening when we were in our Committee of the Whole and that is the fact that we are slowly crowding our industrial areas with residential and it’s one of the compatibility issues that we’re continuing to have to address. But the fact of the matter is we still need gravel. We have to get it from some place and we have to start looking at what our options are going to be. We haven’t really focused on that and we really need to. I think that with the conditions that we’ve presented with this, I think that we’re looking at something that’s a little more unique than what we normally anticipate with a mining operation. I think that this is still an opportunity to continue to look and see how this works. We have the opportunity to do that. If it does not work, then we will know about it with any kind of vibration or seismic monitoring and we will know whether we can move forward or not, but I think we do have that opportunity to pursue this as a unique situation.

Ms. Bennett: I wish that in the past there had been more response on the part of the company to the complaints and that the management hadn’t changed and that these people were made whole. I feel badly for them. At the same time, I think with all of the conditions that we have and the need for gravel in the community, especially with the housing that is being planned, we’re going to need a lot of gravel to meet the needs of construction in our community. As long as they are staking around the gravel extraction and that it is not impacting so directly on the condominium development area and as long as they are carefully monitoring it, then I think I agree with Mr. Haight that we should let this go through and if the monitoring indicates that severe damage is happening to the buildings, then SECON has the option of accessing their liability insurance and making the people whole or the City has the option of closing the operation down if the amount of damages or the amount of vibration is too great, so I think we should go ahead with this and so I will vote in favor of it.

Chair Satre: I truly appreciate the neighbors coming forward. If it wasn't for the neighbors here at the last meeting talking about property damage that has occurred, this meeting likely would not have been continued. We likely would have had a decision at that time and certainly we appreciate you bringing that to our attention and giving us a chance to look at other ways to potentially balance development in this area. I don't think that many people on this board would doubt that there is a correlation between the mining activities and the damage, but I’m not sure it’s our place to determine the actual causation. I’m sure there will be a lawyer who eventually makes money of this issue. At some point in time, the Homeowners' Association, the property owners, SECON are going to have to determine whether it is a construction issue or whether it is a mining issue regardless of whether we approve or deny this permit tonight. There are certain issues there that we simply unfortunately can't provide closure to this evening, but we do appreciate the neighborhood bringing this to our attention.

As for the new conditions that Ms. Camery has brought forward in terms of vibration control, I think they are interesting. I, unfortunately, ultimately think they may be too vague and they may be too expensive to implement. I have some real doubt about those conditions. I’m not sure how to rewrite those or make them better. I don't think they have the specificity that we truly need to
make it happen that I would like to see in a condition, so those give me some concern. Ultimately though, I think that those conditions will help us figure out the real cause of the issue. I think Mr. Steffert, professional engineer with the City and Borough of Juneau, in his letter, states, that it is in SECON’s best interests to monitor vibrations or activity to assure themselves they are not causing the damage or maybe they will find they are causing the damage, and then we will have the litigation that has been spoken to many times this evening, but earlier on in his letter, he states he can’t make informed comments unless the vibrations have been measured and monitored and the new conditions are in line. Even though I think they are vague, I believe they get us down to that point and so I would reluctantly speak in favor of the motion. I’m not sure ultimately that a successful operation can be done with these conditions. I think the bar has been set extremely high, but maybe that’s what we need to do to make a gravel operation happen here, but if they can’t meet these conditions, then it does not happen. I appreciate everybody’s attention to this matter. I appreciate folks being here in the room tonight. So, roll call please.

### Roll call vote:

Ayes: Medina, Haight, Bennett, Miller, Satre  
Nays: Bishop, Grewe, Watson.

Motion carries, USE2012 0019 has been approved.

Mr. Bishop: I would like to give notice of reconsideration.

Chair Satre: Thank you very much Mr. Bishop. For the folks that are here, Mr. Bishop has served notice of reconsideration of the vote. That means that at the next meeting, if he has not asked for immediate reconsideration, we will take that up at the beginning of the agenda, at which time there will have to be a vote on whether or not we have reconsidered that item.